

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/11/2001

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-015936

FILED: _____

SAMADEN CHHENG

SAMADEN CHHENG
822 W 5TH ST APT D
TEMPE AZ 85281-0000

v.

PRESTON TALLEY

PRESTON TALLEY
PO BOX 639
TEMPE AZ 85280-0000

COURT ADMIN-CIVIL-CCC
COURT ADMIN-LCA-CCC
D & C MATERIALS-CCC
EXHIBITS-CCC
REMAND DESK CV-CCC
TEMPE CITY COURT
MICHAEL K JEANES
CLERK OF THE COURT
SUPERIOR COURT OF ARIZONA
201 W JEFFERSON, 2ND FLOOR
PHOENIX AZ 85003

MINUTE ENTRY

This Court issued a minute entry on December 6, 2001 affirming the Tempe City Court's order continuing a Domestic Violence Order of Protection that was previously issued by that court. This Court noted in its opinion that this Court had not received a transcript or tape recording of the hearing held on the Domestic Violence Order of Protection. The record should

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reflect that this Court's December 6, 2001 minute entry was dictated December 1, 2001. The case was submitted as under advisement when Appellee failed to file her Memorandum on or before November 22, 2001. This division's bailiff ordered the transcripts from the Clerk's Office. No transcripts were received until December 10, 2001. The Clerk's Office explained that transcripts, tapes and exhibits for Civil Appeals are kept in a different location from other lower court appeal cases. The effect of the failure of the Clerk's Office to provide the tape recording or transcript from the lower court proceedings to this division in a timely fashion was that this Court ruled without benefit of the tape or transcript.

Civil Court Administration and the Clerk's Office are endorsed on this minute entry with the expectation that we can work together to ensure that this problem does not occur again.

This case is not a Civil Appeal. It is an appeal from a Domestic Violence Order of Protection hearing. The record itself clearly reflects that a Domestic Violence Order of Protection was issued by the Tempe City Court, not an Injunction Against Harassment. This case was misidentified and misnumbered from the moment it was received from the Tempe City Court.

Since receiving the tape recording of the hearing held on the Domestic Violence Order of Protection, this Court has reviewed that tape and specifically finds substantial evidence exists to support the lower court's ruling continuing the Domestic Violence Order of Protection in full force and effect. Specifically, Appellant admitted cracking the window of Appellee's bedroom. Appellee testified at the hearing in a similar fashion, and it is clear that the crime of Criminal Damage was committed on the premises of Appellee's residence by Appellant. Additionally, Appellee testified that Appellant had threatened her. This evidence clearly supports the trial judge's ruling continuing the Domestic Violence Order of Protection in full force and effect.

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Therefore, upon reconsideration on the Court's own Motion (the tape recordings/transcript having been discovered by the Clerk of this Court), this Court finds that the trial court's determination was not clearly erroneous and was clearly supported by substantial evidence.

IT IS ORDERED again affirming the Tempe City Court's order that continued the Domestic Violence Order of Protection previously issued on Appellee's request.

IT IS FURTHER ORDERED remanding this matter back to the Tempe City Court for all further and future proceedings.

Attn: Elia Gonzalez, LCA